

BUREAU OF AUTOMOTIVE REPAIR

FINAL STATEMENT OF REASONS

HEARING DATES: September 7, 2010

SUBJECT MATTER OF PROPOSED REGULATIONS: Enhanced Fleet Modernization Program (EFMP)

SECTIONS AFFECTED: §§ 3394.1, 3394.3, 3394.4, 3394.6 and 3394.7 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations.

Updated Information:

The Initial Statement of Reasons is included in this file. The Bureau of Automotive Repair issued a 15-day notice of availability of modified text that includes changes to the text to reflect changes made to the emergency Enhanced Fleet Modernization Program (EFMP) package.

The following changes were made during the 15-day notice of availability of modified text:

1. Amend Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

- a. Amend the title of section 3394.1 to add “and Enhanced Fleet Modernization Program”.

Changing the title of the section is necessary to give notice to the general public that the Enhanced Fleet Modernization Program will be incorporated into this section of regulations.

2. Amend section 3394.1 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

- a. Remove “by helping consumers comply with the requirements of the Smog Check Program” and “that fails a smog check inspection.”

These modifications are needed due to program changes that expand vehicle retirement. The new program does not require a vehicle fail a Smog Check inspection in order to qualify for retirement.

3. Amend section 3394.4 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

- a. Add “An individual must be the registered owner of the vehicle with vehicle title issued in their name.”

It is necessary to make the distinction between a registered owner and the legal owner of a vehicle. A registered owner and legal owner of a vehicle can have conflicting ideas for the use of a particular vehicle. BAR is adding the requirement that the person be the legal owner in order to be eligible to retire a vehicle.

This edit adds subparagraph (C) to subsection (a)(4).

- b. Add “This section does not apply to the Enhanced Fleet Modernization Program”.

This is necessary to add a distinction between the EFMP and CAP VR program. Further, this section only applies to CAP VR.

This edit adds subsection (d) to section 3394.4.

- c. Add “This section does not apply to the Enhanced Fleet Modernization Program”.

This is necessary to add a distinction between the EFMP and CAP VR program. Further, this section only applies to CAP VR.

This edit adds subsection (b) to section 3394.5.

- 4. Amend section 3394.6 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

- a. Remove “07” and add “09”.

The Bureau updated the Consumer Assistance Program application to incorporate changes made during the emergency EFMP regulation package and the CAP Application package.

- 5. Amend section 3394.7 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

- a. Remove “07” and add “09”.

The Bureau updated the Consumer Assistance Program application to incorporate changes made during the emergency EFMP regulation package and the CAP Application package.

Incorporation by Reference:

The incorporation by reference in §3394.6 and §3394.7 the Consumer Assistance Program (CAP) application form (08_022 CAP/APP (09/10)) is appropriate since publishing this document in the California Code of Regulations would be cumbersome, unduly expensive, impractical, and unnecessary. This revision reflects the correct version of the application and includes the incorporation of vehicle retirement for vehicles participating in the EFMP authorized pursuant to Title 13, Chapter 13, Article 2, California Code of Regulations. The revised application will be incorporated by reference, replacing the version dated 08/10. If anyone should wish to examine the revised application, it is available upon request from BAR. The revised application will also be available for review throughout this rulemaking process and will be available on BAR's Web site www.smogcheck.ca.gov.

Local Mandate:

A mandate is not imposed on local agencies or school districts.

Business Impact:

This regulation will not adversely impact businesses. This initial determination is based on the following facts, evidence, documents, or testimony:

Automotive Dismantler

Automotive dismantlers have contracts to scrap vehicles on BAR's behalf. Dismantlers would see an increase in business through this proposed change.

Dealerships

Given the recent decline in the auto sales industry, the EFMP may help to maintain current employment levels as opposed to creating new jobs. Consumers that retire a vehicle will be compensated through CAP and may use the retirement incentive to purchase a replacement vehicle from a new or used car dealer.

Vehicle Owner Impact

Vehicle retirement is a consumer driven program which consumers will not participate in if it does not provide economical benefits. Owners of older, high-polluting vehicles will benefit due to expanded options for replacing their vehicle with a newer, cleaner vehicle. Vehicles with remaining useful life, which may have little resale value, would receive a cash value as a result of EFMP. In turn, newer vehicles may be purchased as a result of the incentive received from retiring a vehicle. Individuals and businesses selling used vehicles may benefit slightly due to greater demand for their vehicle.

Consideration of Alternatives:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

BAR considered taking no action. However, this option runs counter to the provisions of AB 118 (Nunez, Chapter 750, Statutes of 2007) to provide vehicle owners additional retirement options.

Availability and Location of the Rulemaking File and the Final Statement of Reasons:

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

Objections or Recommendations/Responses:

45-Day Comment Period

The following comment was received from the Specialty Equipment Market Association (SEMA).

Comment 1:

The Specialty Equipment Market Association (SEMA) is pleased to provide comments relative to the proposed Enhanced Fleet Modernization Program (EFMP), particularly as it concerns the accelerated vehicle retirement regulations.

As you may be aware, SEMA is a trade association based in Diamond Bar and made up of more than 6,500 mostly small businesses in California and around the country that manufacture, rebuild, distribute and retail parts and accessories for motor vehicles. The products manufactured by our member companies include functional, restoration, performance and styling enhancement products for use on passenger cars, trucks and special interest vehicles.

As a general matter, SEMA feels that in light of the economic freefall that California is experiencing it is imprudent for the state to move forward with spending the additional funding to scrap old cars and that this activity would take priority over children's health insurance, public education, public safety or any number of vital services being eviscerated or compromised through budget cuts. This is especially true in light of last

year's creation by the U.S. Congress of a national scrappage program, which provided a far greater credit than the California proposal for new car purchases.

However, if addressing emissions from older vehicles remains a budget priority over other programs, then SEMA believes there are far more effective uses for the proposed funding. Retaining the requirement that a vehicle must first fail a smog test before being eligible is critical. Then, the Bureau should consider increasing the amount available, based on income, to repair vehicles to acceptable emissions levels. By restructuring the repair program to address repair costs, the BAR will truly address the most problematic polluters on California's roads.

As one of the earliest participants in the development of accelerated vehicle retirement programs, SEMA continues to believe that the most cost effective and proven means to reduce mobile source emissions from consumer vehicles is to accurately identify and repair the highest polluting vehicles of any model year. The agency should place greater emphasis on the "M" in "I&M" because emission reductions claimed through proper repairs are verified benefits that do not rely upon flawed modeling assumptions or changes in consumer behavior. SEMA continues to believe that only when proper repairs are not viable should the vehicle then be retired, possibly with the offering of incentives to assist those in need of financial help.

The current proposed regulation follows the precedents set by previous programs in many respects. However, it deviates from these in several ways in an attempt to expand the number of vehicles eligible for the proposed program. SEMA believes these variations go in the wrong direction.

Over the many years of SEMA's involvement in the regulatory process for the development of scrappage regulations, one of the highest priorities of any such program was the prevention of fraud such that vehicles which were not actually contributing to the emission inventory would not be accepted into the program. This was always intended to ensure emission reductions would not be claimed and funds would not be spent when there was no real or verifiable emission reduction. SEMA believes the current proposal greatly expands not only the potential universe of eligible vehicles but also the likelihood that fraud will result.

Response: The Enhanced Fleet Modernization Program (EFMP) was created by Assembly Bill (AB) 118 (Nunez, Chapter 750, Statutes of 2007) and mandated a \$1 increase to the vehicle registration fee for the purpose of provide funding for off-cycle vehicle retirement. Air Resources Board (ARB) was the state agency charged with developing regulations to implement the program. Regulations for the EFMP were codified in Article 2, Section 2620-2630, Title 13, Chapter 13, of the California Code of Regulations. Due to experience in scrapping vehicles, the Bureau was tasked with administering the program envisioned by ARB. This proposed regulation only makes minor technical, grammatical, and editorial changes to incorporate ARB's regulations into BAR's application and documentation requirements.

As indicated below, Health and Safety Code Section 44125 (a) charges ARB with adopting program guidelines:

“No later than July 1, 2009, the state board, in consultation with the Bureau of Automotive Repair (BAR), shall adopt a program to commence on January 1, 2010, that allows for the voluntarily retirement of passenger vehicles and light-duty and medium-duty trucks that are high polluters. The program shall be administered by the BAR pursuant to guidelines adopted by the state board.”

Further, a similar comment was answered by ARB during their EFMP Final Statement of Reasons:

“Staff agrees that vehicle repair programs can be cost effective. However, the legislative direction for the EFMP does not allow for the substitution of another vehicle emission reduction program in place of vehicle retirement, even if the proposed alternative is ostensibly more cost effective. The mandate is to adopt a program that allows for voluntary vehicle retirement. Concerning the three specific points raised regarding the superior cost effectiveness of vehicle repair programs, we note: (1) While the emission reductions resulting from repairs can be objectively verified by testing the emissions before and after repair, it can also be said that the emission reductions from vehicle retirement can be objectively verified by testing the retired vehicle and the replacement vehicle. But both analyses are an oversimplification; there are additional assumptions about vehicle usage in both cases that are very problematic. The longevity of repair benefits is also difficult to determine, whereas a retired vehicle will not pollute again. (2) Repairs cannot be generally enhanced with upgraded emission controls because legal and verified solutions do not generally exist for light duty vehicles. It is technologically possible, but not cost effective to upgrade the emission controls; it is typically only cost effective to repair the existing system. (3) Avoiding the emissions generated by production of a new vehicle does have benefits which are problematic to quantify; we also note that there is currently no large-scale vehicle manufacturing in California.”

Comment 2:

The current rulemaking in which BAR is engaged proposes to increase the number of eligible vehicles by allowing consumers to scrap *any vehicle at any time for any reason*, expanding the scope of the program, which currently only allows for the retirement of on-cycle vehicles that have failed their biennial required smog check in the year they are seeking to participate. The new rule would also provide an exception to the current prohibition on participation by unregistered vehicles, permitting their retirement if they can prove that they have been driven primarily in California for the previous two years. This provision would unfairly allow vehicles not paying registration fees, which fund the program, to be permitted to benefit from the program. A bill has recently been making its way through the legislature, A.B. 787, to increase the maximum amount that can be paid to a vehicle owner for participation in the vehicle retirement program from \$1,500 to \$2,000. Even this bill, which seeks to expand the program, adds language to alter the

controlling statute to specify that only vehicles registered in the state for a continuous two years should be allowed to receive California funds.

Response: On June 23, 2010 Office of Administration (OAL) reviewed ARB's final regulation package and made the determination that restricting participation in EFMP, by requiring outstanding registration fees to be paid, was outside the scope of AB 118. This determination resulted in ARB issuing a 15-day notice and removing this requirement.

“By amending the proposal to require registration with DMV in every case and in so doing eliminating the possibility of participation by owners of vehicles otherwise proven to have been driven primarily in California for the last two years, the Board has impaired the scope of the program contemplated in Health and Safety Code section 44125.”

As adopted in ARB's EFMP regulation, a vehicle must have been registered in California for two years or be primarily driven in California for the last two years to qualify for the program. These measures will help ensure emissions credits are quantifiable.

Comment 3:

- Voucher Program

Included in the proposed rule is a new voucher program to be operated in the San Joaquin Air Pollution Control District and the South Coast Air Quality Management District. The voucher program would provide additional incentives for vehicle owners to scrap their older vehicles by providing them with funds to purchase a new vehicle. BAR has stated that its intention is to provide \$2,000 or \$2,500 vouchers to qualifying consumers. The voucher program's minimum payout at \$2,000 is contrary to the controlling statute, Cal. Health & Safety Code § 44062.3, which already allows the Bureau to pay an owner of a vehicle more than the maximum amount if it is determined to be cost effective, providing flexibility for BAR to establish cost effectiveness and setting an amount without outside oversight. This flexibility is designed to give BAR authority to offer more money on a case-by-case basis. If it was the intent of the legislature to authorize a program that offered \$2,000 to \$2,500 vouchers for the retirement of a vehicle, they would have set the maximum standard amount at such. AB 787 seeks to increase this maximum, but only to \$2,000.

Response: The provisions of AB 118 required ARB to adopt regulations to implement an off-cycle vehicle retirement program. BAR's proposed regulation only seeks to reference the EFMP into BAR's code section. This regulatory action does not describe program specifics as related to EFMP, specifically the voucher component. This comment is outside the Bureau's proposed regulatory action.

Comment 4:

- Loss of Valuable Restoration Parts

In addition to removing these treasured classic vehicles from society, the new car scrap program also prohibits restorers from getting their hands on component parts from the vehicles. Dismantlers are not allowed to remove any parts from vehicles they have purchased through this program for resale or reuse unless specifically allowed by BAR through contract. So, not only must each vehicle owner deliver their vehicle to the junk yard with all its component parts intact, these parts are also required to be unnecessarily destroyed.

Response: This comment is outside the scope of the Bureau's proposed regulation.

ARB addressed similar concerns regarding the loss of parts in their EFMP Final Statement of Reasons:

"The intent of the program is to reduce emissions by retiring vehicles with the highest emissions. While pre-1976 vehicles as a group are among the highest emitting in the entire fleet, these vehicles are not eligible for the existing Consumer Assistance Program since they do not have to take an emissions test for registration. With that said, the EFMP is strictly voluntary; any vehicle owner who meets program requirements may voluntarily retire their vehicle for an incentive. In addition, vehicles targeted by BAR as being highest emitters could receive a further incentive for replacement with a newer, cleaner vehicle. If the vehicle contains high value parts, the dismantler does have the option to purchase the vehicle from the participant and resell the vehicle whole or in part."

Comment 5:

Argument Against

As stated previously, SEMA continues to believe it is both more cost effective and productive to emphasize proper repair of vehicles instead of scrappage. Emission reductions from repairs are real and are also objectively verified. Repairs can also be enhanced through the use of proven methods (newer technology catalytic converters and other emission control devices, for example) which upgrade the vehicle to emit at lower levels than was originally designed without requiring a change in consumer behavior or the retirement of the vehicle. Such upgrades would provide real surplus emission reductions with a durability matching or exceeding the three year life of the emission benefits usually claimed through scrappage. Furthermore, by not generating the emissions associated with the manufacture of a replacement vehicle, additional emission benefits will be realized.

The overall cost of a program that focused on repair would be far less than a scrappage program while the projected emission reductions would be far more likely to be achieved. Consumer acceptance would also likely be greater since there would be no need to come up with additional funds to supplement the incentive received for scrappage in order to purchase another vehicle. SEMA continues to believe that the increased incentive amounts will not be high enough to allow the majority of those owning vehicles

eligible for a scrappage program to part with them since the overall cost of changing to another vehicle remains too high.

Response: This comment is substantially similar to a previous comment. Please reference response No 1. This comment is outside the scope of BAR's proposed regulation.

However, ARB addressed concerns regarding the effectiveness of vehicle repair program in their EFMP Final Statement of Reasons:

“Staff agrees that vehicle repair programs can be cost effective. However, the legislative direction for the EFMP does not allow for the substitution of another vehicle emission reduction program in place of vehicle retirement, even if the proposed alternative is ostensibly more cost effective. The mandate is to adopt a program that allows for voluntary vehicle retirement. Concerning the three specific points raised regarding the superior cost effectiveness of vehicle repair programs, we note: (1) While the emission reductions resulting from repairs can be objectively verified by testing the emissions before and after repair, it can also be said that the emission reductions from vehicle retirement can be objectively verified by testing the retired vehicle and the replacement vehicle. But both analyses are an oversimplification; there are additional assumptions about vehicle usage in both cases that are very problematic. The longevity of repair benefits is also difficult to determine, whereas a retired vehicle will not pollute again. (2) Repairs cannot be generally enhanced with upgraded emission controls because legal and verified solutions do not generally exist for light duty vehicles. It is technologically possible, but not cost effective to upgrade the emission controls; it is typically only cost effective to repair the existing system. (3) Avoiding the emissions generated by production of a new vehicle does have benefits which are problematic to quantify; we also note that there is currently no large-scale vehicle manufacturing in California.”

Comment 6:

Dismantle

SEMA contends that the agency's policy with regarding to the dismantling rules is intended solely to facilitate the unnecessary and counterproductive elimination of vehicles and their parts. SEMA continues to vigorously oppose such mandated destruction of vehicles and their parts. Deviating from the established definition of a word does not change the significant negative impact on the automotive hobby, aftermarket businesses and low income persons that will result from this mandated destruction.

Response: This comment is substantially similar to a previous comment. Please reference response No 4. Below is summary of a similar comment in ARB's EFMP Final Statement of Reasons:

“The intent of the program is to reduce emissions by retiring vehicles with the highest emissions. While pre-1976 vehicles as a group are among the highest emitting in the entire fleet, these vehicles are not eligible for the existing Consumer Assistance Program since they do not have to take an emissions test for registration. With that said, the EFMP is strictly voluntary; any vehicle owner who meets program requirements may voluntarily retire their vehicle for an incentive. In addition, vehicles targeted by BAR as being highest emitters could receive a further incentive for replacement with a newer, cleaner vehicle. If the vehicle contains high value parts, the dismantler does have the option to purchase the vehicle from the participant and resell the vehicle whole or in part.”

Comment 7:

Program Limits

SEMA's is concerned that by relaxing the vehicle eligibility criteria will increase the likelihood for fraud. The inclusion of vouchers in addition to direct payment at time of vehicle retirement not only aggravates this concern but also does so without any real assurance that there would be an increased emission reduction/benefit. The proposal does not go far enough to ensure targeted vehicles are in fact emitting at a higher level than solicited vehicles and are thus worth paying a premium for. The net effect of this is to pay extra for no verified benefit which simply wastes taxpayer funds that could be put to better use. SEMA believes that if a voucher system is to be used then it should be such that a targeted vehicle is confirmed on an individual basis as being a higher emitter. This can readily be accomplished by requiring that the emissions of targeted vehicles first be confirmed by emission testing either in the form a multiple high remote sensor readings, direct emission tests (out of cycle, roadside pullover, etc.) or a combination of both. To the extent a confirmed high emitting vehicle cannot be cost effectively repaired then paying an incentive to scrap it should be based on confirmation of the vehicle emission level, not simply projections and averages based on flawed computer modeling assumptions. This is even more critical if additional incentives are to be provided for "targeted" vehicles which "probably" emit more. SEMA does not believe that relying on probability alone is acceptable. There must be objective verification that individual targeted vehicle emissions do, in fact, greatly exceed those of solicited vehicles.

Response: This comment is substantially similar to a previous comment. Please reference response No 2. However, ARB addressed a similar comment in their EFMP Final Statement of Reasons.

“The claim that targeted vehicles will have higher emissions on average than solicited vehicles is based on statistical probability of higher emissions as determined by the Bureau of Automotive Repair’s High Emitter Profile model which is used in administration of the Smog Check program and has been validated through scientific investigation and the public process. The use of statistical probabilities in selection processes is an established and respected practice in the scientific community. In addition, the local air districts administering the voucher program may choose to use other established means, such as remote sensing or confirmatory Smog Check testing to

identify targeted vehicles. All of the means of identifying targeted vehicles use established and vetted processes to determine that the emissions will on average exceed that of the solicited vehicles.”

Comment 8:

Eligibility Requirements

SEMA is both considerably dismayed and disappointed by the proposal to relax the vehicle eligibility requirements. Having witnessed years of strong debate on this topic from which the ultimate decision has always been in favor of minimizing the potential for fraud, SEMA cannot find a persuasive rationale for this complete change in direction. SEMA strongly believes that the previous concerns were justified and the relaxation of the vehicle eligibility standards will lead to a dramatic increase in program fraud both by consumers and others. The proposal simply makes committing fraud too easy and appealing. For example, a vehicle owner could have brought in a vehicle from another state or country several years ago and had it repaired in the state. Even if that one event was followed by the vehicle being left unused shortly thereafter, that vehicle could be considered an eligible vehicle even though it has remained mostly unused for an unknown period of time. Nothing in the proposal prevents such scenarios since a vehicle in California during the last two years which has not only not been insured but has also not been registered can simply be turned in for a cash windfall by any owner, legal resident or not, simply based on the provision of a single service invoice showing the VIN and proof of residence. There simply is no proof the vehicle was being driven or contributing to the emission inventory, yet there is considerable incentive to generate fraudulent invoices (an extremely simple task) to be able to procure a considerable windfall.

Response: This comment is substantially similar to a previous comment. Please reference response No 2. This comment is outside the scope of BAR’s proposed regulatory action.

However, ARB addressed a similar question during their EFMP Final Statement of Reasons.

“There is no relaxation of the vehicle eligibility requirements relative to existing programs except as directed by the authorizing legislation of the EFMP.”

Comment 9:

SEMA strongly recommends that there be no relaxation of the vehicle eligibility requirements (relative to existing scrappage programs) to not only reduce the potential for such easily committed fraud but also to help ensure the vehicles which may ultimately be submitted for retirement were, in fact, actually being driven and were active contributors to the emission inventory. SEMA has provided several recommendations in the past about how vehicle condition and other factors can be better used to improve the cost

effectiveness of any vehicle scrappage program. These recommendations are on record with our comments for the existing scrappage programs and are also available upon request. The guiding principle of these and our current recommendations is that if funds are to be paid to car owners for the early retirement of their vehicles, then a surplus emission benefit must be objectively verified, not simply projected and/or probable based on computer modeling. To the extent that relaxation of the eligibility standards is inherently opposed to this principle and is very likely to create substantial and tangible motivation for fraud, we oppose these provisions. SEMA does not believe the argument that it is allowable to do so in the interest of expanding the universe of potential program vehicles is supportable, particularly when there are so many flawed assumptions and inherent deficiencies with projections in the EMFAC calculations.

Response: This comment is substantially similar to a previous comment. Please reference response No 2. SEMA contends that relaxing the vehicle retirement eligibility will create a program rife with fraud. However, AB 118 specifically mandates the current vehicle retirement program be expanded and include fewer restrictions. These program changes allow for additional vehicles to be removed from California's roads sooner, creating added emissions benefits. Please reference response No 1.

Comment 10:

Ineligible Vehicles

As just stated above, SEMA does not support any relaxation of the vehicle eligibility requirements, particularly not to potentially expand the universe of potential program vehicles. Thus, SEMA also believes the additional vehicles proposed for inclusion should instead be added as *ineligible* vehicles to minimize the potential for program fraud and maximize the potential program cost effectiveness as was previously described.

Response: This comment is substantially similar to a previous comment. Please reference response No 2.

Comment 11:

Targeted Vehicles and Vehicle Solicitation

SEMA does not believe vehicles should be targeted based upon their emission potential for the reasons stated previously. Instead, SEMA believes any vehicles to be solicited should be identified based on actual emission data that demonstrates that each such vehicle is, in fact, a verified high emitter. Actual data is far more likely to ensure actual benefits, whether scrappage or repair is to be the option chosen. SEMA believes there must be direct measurement of the vehicle emissions to ensure and verify accurate emission reductions are being assigned to the program. SEMA has not, and does not, support predefining specific groups of vehicles as being high emitters and/or potential scrappage candidates (targeted or not) based on such parameters as model year, fuel used or annual mileage accrual. Gross polluting vehicles can be of any model year, vehicle

type and fuel, etc., and thus SEMA believes direct measurement of actual/individual vehicles instead of models and projections based on predetermined vehicle groups should be the basis for soliciting high emitting vehicles of any kind.

Response: This comment is substantially similar to a previous comment. Please reference response No 7. The Bureau's regulation does not detail program specifics; rather it references ARB's EFMP regulation, which was recently adopted.

Comment 12:

Voucher Program

The setting of an amount to pay vehicle owners to retire their vehicles, even if done through a voucher for the purchase of a new vehicle, should be congruous with the current California Health and Safety Code. Setting the amount for which a voucher is worth at \$2,000 or \$2,500 goes against the spirit of the controlling statute, which sets the maximum at \$1,500, excepting a specific situation in which BAR has used its discretion to judge that more is cost effective. Cost effectiveness has not been proven, nor is BAR correctly exercising its discretionary function in basing the entire voucher program on \$2,000 and \$2,500 payouts.

Response: This comment is substantially similar to a previous comment. Please reference response No 3.

Comment 13:

Parts Recycling and Resale

Current scrappage programs require that engine and driveline-related parts be permanently destroyed for emission credit to be granted. Such needless destruction fails to recognize the reality that a given number of older vehicles will remain in the fleet due to economic necessity. Mandatory destruction of parts only serves to artificially inflate the value of such vehicles and their parts, thus rendering them unaffordable to those who need them to maintain their primary/basic transportation. Even significant repairs to an older vehicle tend to cost less than the fees for licensing and ensuring a much newer vehicle.

SEMA therefore requests that all parts be allowed to be recycled and/or sold to help better maintain the majority of vehicles which will not be program participants. This will not only reduce the hardship placed on those with low/fixed incomes, but it will also help prevent the loss of rare, irreplaceable parts needed by car collectors and businesses. The mandated destruction of needed parts incentivizes persons needing inexpensive basic transportation to break the law by avoiding the Smog Check and/or registration process, it destroys valuable parts desired by car collectors and it results in a negative benefit since the increased emissions from the larger number of more poorly maintained vehicles that will remain on the road will surely exceed the nonexistent emission contribution from

many program vehicles which were not even contributing to the emission inventory for the reasons previously stated. Eliminating the mandatory destruction of parts will not only preserve rare parts for collectors and businesses but will help ensure a sufficient supply of affordable repair parts for those who need them. This will result in better maintenance and lower emissions than would otherwise be the case for those vehicles which are going to be driven anyway due to economic reality.

Response: This comment is substantially similar to a previous comment. Please reference response No 4.

Comment 14:

Congressional “Cash for Clunkers” Legislation

In the Federal ‘cash for clunkers’ legislation, Congress was persuaded to include two provisions to help lessen the program’s potential impact on the automotive aftermarket and collectors. The provisions exclude vehicles 25-years old and older from the scrappage program and expand parts recycling opportunities. Further, the Federal program allowed consumers to trade in their older vehicles and receive vouchers worth up to \$4,500 toward the purchase or qualified lease of a new, more fuel-efficient car or truck. As indicated, the trade-in vehicle must have been of model year 1984 or newer, in drivable condition and continuously insured and registered to the same owner for at least one year.

We believe that it would be wise of the agency to study the regulatory actions undertaken by NHTSA prior to moving forward with this state regulation. Further, we believe it’s critical that the agency weigh consideration of the benefits of excluding vehicles currently not subject to Smog Check.

Response: This comment is outside the scope of BAR’s proposed regulatory action. However, ARB answered a similar question during their EFMP Final Statement of Reasons:

“The regulatory language is consistent with BAR’s existing process under their Consumer Assistance Program. Consistency is necessary for audit and enforcement purposes.”

15-Day Notice of Modified Text

There were no objections or recommendations regarding the proposed action.